

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 21/3562 SC/CIVA

BETWEEN: Tropical Plantations Limited
Appellant

AND: Pierrette Carlo
Respondent

Date of Hearing: 31 May 2022
Before: Justice V.M. Trief
Counsel: Appellant – Mr A. Kalmet and Mrs C. Hamer, for Mr M. Hurley
Respondent – Mr R. Willie, via video link
Date of Decision: 2 June 2022

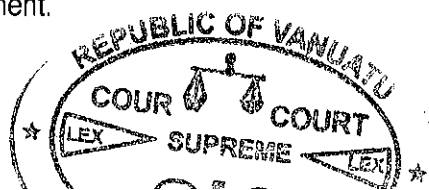
JUDGMENT

A. Introduction

1. This appeal arises from the Magistrates' Court judgment finding the Appellant Tropical Plantations Limited ('TPL') liable in negligence and awarding damages to the Respondent Pierrette Carlo for personal injuries caused by a bullock from TPL's farm.

B. Background

2. TPL operates a cattle farm called "Belmol Farm" located near Beleru Area in Luganville, Santo.
3. On 22 August 2019, Ms Carlo was attacked at her house at Radio Station area by a bullock with TPL tag registration number 18-690. The bull hit her with its horn from behind.
4. Ms Carlo's late husband and son killed the bullock.
5. She was taken to hospital with a wound and bleeding, and admitted for treatment including surgery. The injuries were not permanent.



6. Ms Carlo filed her Claim in negligence in the Magistrates' Court.
7. After trial, the Magistrates' Court entered judgment in Ms Carlo's favour. It held TPL liable in negligence and awarded VT300,000 general damages and VT100,000 special damages even though it had stated that:

20. *On assessment of damages claimed, the Counsel does not provide any assistance to the breakdown of the amount claimed, the only evidence filed is medical certificate which confirm no permanent injury.*

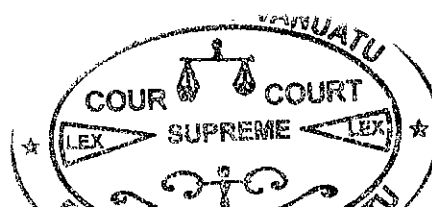
C. The Appeal and Discussion

8. TPL now appeals the whole of the judgment.
9. As to the finding of liability, the grounds of appeal alleged that the learned Magistrate erred in failing to assess the evidence correctly and failing to apply the correct legal principles. However, only one needs to be discussed as Mr Willie accepted at the hearing of the appeal that the only evidence before the Court as to damage was Ms Carlo's medical report which stated as follows:

The injuries described above are very consistent with Ms Carlo's allegation of bull attack with implement from bull horn.

Ms Carlo is expected to make a full recovery with no permanent disabilities.

10. Mr Willie further accepted that there was no evidence at all of the actual injuries caused to Ms Carlo.
11. In the circumstances, it was accepted that the Magistrates' Court erred in awarding damages. That concession means that the award of damages in the judgment must be set aside.
12. As to liability, Mr Kalmet submitted that ownership of the bullock was insufficient to establish a duty of care for TPL. He submitted that given that the bullock is *mansuetae naturae*, Ms Carlo also had to prove that TPL had knowledge of an evil propensity in that particular bullock at the time of the attack or at an earlier time, citing *Tebeim v Furet* [2020] VUSC 127 which was also relied on at trial. However, there was no such evidence. Indeed, Robert Osborne, a Company Director of TPL, confirmed in examination-in-chief that he had no knowledge of an animal's evil propensity. In the circumstances, the learned Magistrate erred to find TPL liable.
13. Mr Willie submitted in response that the learned Magistrate was correct in finding TPL liable. Mr Osborne had admitted ownership of the bullock based on the ear tag and Ms Carlo's son's evidence that he cut the tag off the slaughtered bullock was not disputed at trial. He submitted that ownership having been proved, TPL was liable. He also submitted that *Tebeim v Furet* was distinguishable as unlike the present matter, there was no satisfactory identification evidence in that case.

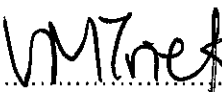


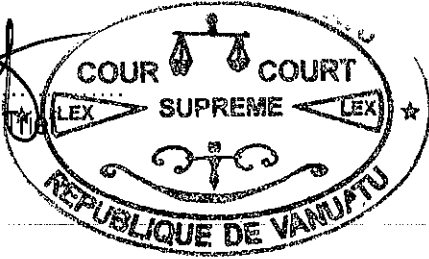
14. The applicable common law principles established in the Solomon Islands case, *Funua v Cattle Development Authority* [1983] SBMC 1, and upheld by Saksak J in *Tebeim v Furet* [2020] VUSC 127 at [9], are that a bullock is *mansuetae naturae*, defined by *Black's Law Dictionary* as "(Of animals) tame or tameable"¹. Accordingly, the owner or occupier of the land is liable only if it can be shown that he/she knew that the animal possessed vicious or mischievous propensities, or possibly, that there were other special circumstances which took the case out of the ordinary rule and were known to the owner, or of which he/she ought to have known, and against which it was his/her duty to guard.
15. I do not agree that *Tebeim v Furet* is distinguishable. On the contrary, it is on point and applicable with the facts of that case involving a cow which had strayed onto the road, allegedly from the defendant's broken fence, and caused damage to the claimant's bus in the ensuing collision.
16. Precedent dictated that the principles applied in *Tebeim v Furet* were binding on the Magistrates' Court. Accordingly, the learned Magistrate erred in misapplying them to the facts of the case. He ought to have held that there was no duty of care established on the part of TPL given that a bullock is *mansuetae naturae* and Ms Carlo did not lead any evidence that TPL had knowledge of any evil propensity of this animal prior to, at the time of the alleged attack or at any other time. Indeed, Mr Osborne confirmed in his evidence that he did not have any such knowledge. In the circumstances, TPL did not have a duty of care as alleged including to keep or maintain its fence. The whole of the judgment must be set aside.

D. Result and Decision

17. The appeal is allowed.
18. The Magistrates' Court judgment dated 6 October 2021 is set aside.
19. The Respondent's Claim in Magistrates' Court Civil Case No. 20/2355 is dismissed.
20. I will hear counsel as to costs both at first instance and in respect of this appeal **at 8.20am on 22 June 2022** at the Supreme Court Registry and by video link to the Luganville Court House.

DATED at Port Vila this 2nd day of June 2022
BY THE COURT


Justice Viran Molisa



¹ (8th ed.) (Thomson West, 2004) at p. 983.